UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424-0001

U.S. DEPARTMENT OF JUSTICE FEDERAL BUREAU OF PRISONS FEDERAL CORRECTIONAL INSTITUTION FORREST CITY, ARKANSAS Respondent	Case No. DA-CA-80834
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 0922 Charging Party	

NOTICE OF TRANSMITTAL OF DECISION

The above-entitled case having been heard before the undersigned Administrative Law Judge pursuant to the Statute and the Rules and Regulations of the Authority, the undersigned herein serves his Decision, a copy of which is attached hereto, on all parties to the proceeding on this date and this case is hereby transferred to the Federal Labor Relations Authority pursuant to 5 C.F.R. § 2423.34(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R. §§ 2423.40-2423.41, 2429.12, 2429.21-2429.22, 2429.24-2429.25, and 2429.27.

Any such exceptions must be filed on or before **APRIL 5, 2000**, and addressed to:

Federal Labor Relations Authority
Office of Case Control
607 14th Street, NW., Suite 415
Washington, DC 20424-0001

ELI NASH, JR.

Administrative Law Judge

Dated: March 6, 2000
Washington, DC

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424-0001

MEMORANDUM DATE: March 6, 2000

TO: The Federal Labor Relations Authority

FROM: ELI NASH, JR.
Administrative Law Judge

SUBJECT: U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS
FEDERAL CORRECTIONAL INSTITUTION
FORREST CITY, ARKANSAS

Respondent

and Case No. DA-CA-80834

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 0922

Charging Party

Pursuant to section 2423.34(b) of the Rules and Regulations, 5 C.F.R. § 2423.34(b), I am hereby transferring the above case to the Authority. Enclosed are copies of my Decision, the service sheet, and the transmittal form sent to the parties.

Enclosures

FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges OALJ

00-19

WASHINGTON, D.C.

U.S. DEPARTMENT OF JUSTICE FEDERAL BUREAU OF PRISONS FEDERAL CORRECTIONAL INSTITUTION FORREST CITY, ARKANSAS Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 0922 Charging Party	Case No. DA-CA-80834

Steve Simon, Esquire
William C. Lindsey, Esquire
For the Respondent

Denyce E. Lemons, Esquire
John E. Bates, Esquire
For the General Counsel

Before: Eli Nash, Jr.
Administrative Law Judge

DECISION

Statement of the Case

This case arose under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the United States Code, 5 U.S.C. § 7101, *et seq.* (the Statute), and the Rules and Regulations of the Federal Labor Relations Authority (hereinafter FLRA/Authority), 5 C.F.R. § 2411 *et seq.*

Based upon an unfair labor practice charge filed by the Charging Party, the American Federation of Government

Employees, Local 0922 (hereinafter Union/Charging Party), a complaint and notice of hearing was issued by the Regional Director of the Dallas Regional Office. The complaint alleges that the U.S. Department of Justice, Federal Bureau of Prisons, Federal Correctional Institution, Forest City, Arkansas (Respondent), violated section 7116(a)(1), (5) and (8) of the Statute by failing to provide a sanitized listing of disciplinary and adverse actions taken since June 1996; the SIS manual and a sanitized listing of disciplinary and adverse actions taken since June 1996; the SIS manual and any and all operations memoranda, program statements, and manuals that indicate how an investigation should be conducted and how referral to the Office of Internal Affairs is handled; any and all operations memoranda, program statements, manuals, and documents that indicate who proposes discipline, how the decision to impose discipline is made, who determines what the proposal for discipline is, and who can resolve such matters without imposing discipline; the complete investigative file on Shannon Hendrickson.

A hearing was held in Memphis, Tennessee, at which time all parties were afforded a full opportunity to be represented, to be heard, to examine and cross-examine witnesses, to introduce evidence and to argue orally. All parties filed timely post-hearing briefs which have been fully considered.

Based upon the entire record, including my observation of the witnesses and their demeanor, I make the following findings of fact, conclusions and recommendations.

Findings of Fact

At all times material herein, the Respondent was an agency under 5 U.S.C. § 7103(a)(3). At all times material herein, the Union was a labor organization under 5 U.S.C. § 7103(a)(4) and is the exclusive representative of a unit of employees appropriate for collective bargaining at Respondent.1

1
Respondent's uncontested motion to correct transcript is granted.

Sometime around May 21, 1998,[2] Officer Shannon Hendrickson, a bargaining unit employee, requested annual leave from a lieutenant. The lieutenant referred Hendrickson to Hendrickson's shift lieutenant, to see if she could get the day off. The following day Hendrickson talked to another lieutenant, who that evening called a lieutenant on the telephone, who was going to be the shift lieutenant on the day that Hendrickson wanted to take annual leave. That lieutenant told Hendrickson that there was no problem, but Hendrickson would have to talk to the acting captain. Hendrickson contacted Lieutenant Jones, the acting captain who granted her leave request. However, due to an apparent miscommunication, Hendrickson should not have been granted leave. Around July 1, Hendrickson was placed under an investigation and subsequently received a one-day suspension.

As a result of that suspension, the Union made a written request for information dated July 9. The Union claimed that it needed the information within five working days to ensure that it would have ample time to review the information prior to the time limit to file a grievance would expire. Respondent replied in its response dated July 15, denying the Union's request. Respondent contended that the Union failed to provide enough information to create a particularized need because it failed to provide the following with specificity: (1) why the Union needed the information; (2) how the Union would use the information; and (3) how the use of the information related to the union's representational responsibilities under the Statute.

Thereafter, on July 17, the Union amended its data request, asking for the same information. In its amended requested, the Union said it needed the information to determine if Respondent was consistent in disciplinary actions taken against bargaining unit employees compared with the disciplinary actions taken against supervisors, and that the information would be used to survey the comparisons between exempt and nonexempt employees. Additionally, the Union indicated that the information would also be used to compare the action taken on cases similar in nature. Respondent replied to the second request on July 22, again

---

[2] Unless otherwise noted all dates hereafter are 1998.

denying the Union's request for the same reason it denied the July 9, request.

Sometime around July 30, the Union made a third amended data request. This time the Union requested for four items: (1) a listing of disciplinary and adverse actions taken since June 1996. The Union explained that all personal identifiers such as names and social security numbers should be sanitized and the listing should be coded to reflect whether the employee is a bargaining unit member, a nonbargaining unit member, a supervisor/department head, or an executive staff member and should also be coded to indicated race, ethnic origin, and gender. The Union also asked that the listing be numbered sequentially; (2) the SIS manual and any and all operations memoranda, program statements, and manuals that indicated how an investigation would be conducted and how referral to the Office of Internal Affairs is handled; (3) any and all operations memoranda, program statements, manuals, and documents that indicate who proposes discipline, how the decision to impose discipline is made, who determines what the proposal for discipline is, and who can resolve such matters without imposing discipline; and (4) the complete investigative file on Hendrickson. Around July 30, the Union made a written request to prolong the grievance deadline for Hendrickson.

The Union explained that it needed the list of disciplinary and adverse actions in order to determine whether or not a grievance should be filed in the case of the disciplinary action imposed on Hendrickson. The Union also explained that it needed the information to determine if Respondent had imposed disparate discipline, based on race, sex, or ethnic origin, and/or based on bargaining unit membership as opposed to employees who are not in the bargaining unit, in particular employees who hold supervisory or higher positions. The Union asserted that the program statement on standards of conduct and responsibility indicates that employees are held to the same standard of conduct, but that supervisors are held to a higher standard of conduct due to their increased level of responsibility and the need to set an example to other employees. The Union explained that listing the specific infraction and coding the documents in the way requested would allow the Union to make the necessary comparisons.

The Union explained that it needed the SIS manual and other memoranda, program statements and manuals in order to determine whether or not a grievance should be filed in the case of the disciplinary action imposed on Hendrickson. Further, the Union maintained that it needed the information to determine whether the investigation of Hendrickson was conducted properly and in accordance with Bureau of Prison policies and procedures, what evidence is required to be gathered, and whether all evidence was gathered in the case. The Union also stated that it needed the SIS manual and other memoranda, program statements and manuals to determine whether Hendrickson was treated differently than other employees and to determine if there was exculpatory evidence that was overlooked. Similarly, the Union said that it needed the information in memoranda, program statements and manuals to determine whether or not a grievance should be filed in the case of the disciplinary action imposed on Hendrickson. The Union also said that it needed the information to determine who can formally resolve problems between employees within the work place in order to determine if the supervisors had the authority to resolve the matter without imposing discipline, because an investigation was conducted and discipline imposed after the employee involved was told by three supervisors that the matter was closed.

The Union stated that it needed the investigative file of Hendrickson in order to determine whether or not a grievance should be filed in the case of the disciplinary action imposed on Hendrickson. Furthermore, the Union explained that it needed the information to determine if there was exculpatory evidence in the file that was not made available to Hendrickson and the Union and to determine if all the evidence was gathered. In addition, the Union stated that it needed to be apprized of all the information available to the Warden, who made the decision on the disciplinary proposal, to determine if the affected employee and the Union had the opportunity to present a complete defense before the decision was made, and whether there were factors considered in the decision of which the employee and the Union were not aware.

Around August 7, Respondent made its final reply to the data requests, once again denying the Union's requests. Respondent repeated the response it gave to the Union's two previous requests, that the Union had failed to state a

particularized need for disciplinary and adverse actions. With regard to the SIS manual and memoranda, program statements and manuals requested in items 2 and 3, Respondent stated that the requests were denied because the requests were for an interpretation of policy and procedures and were not requests for data under the Statute. As to the investigative file of Hendrickson, Respondent denied the request, stating that the Union had access to all the information which was used and considered in suspending Hendrickson and that the request for determining if all the evidence was gathered was an interpretation of policy and procedures and was not a request under the Statute.

Analysis and Conclusions

Section 7114(b)(4) of the Statute provides that an agency has the duty to furnish to the exclusive representative involved, or its authorized representative, upon request and, to the extent not prohibited by law, data: (1) which is normally maintained by the agency in the regular course of business; (2) which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and (3) which does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining. Counsel for the General Counsel maintains that the Union's data request meets all of the above requirements and the data in its entirety should have been provided to the Union. Respondent does not contest that the requirements are met and the record evidence set out below supports the General Counsel's conclusion that the requirements are met.

Respondent argues that if the Union had any question regarding the propriety of the investigation it could have filed a grievance or gone to arbitration. That is precisely why the Union made its requests for information, to determine whether or not a grievance should be filed. Respondent's argument apparently would require the Union to file a grievance or ask for arbitration before any requests for information under section 7114(b)(4) of the Statute are granted. Counsel for the General Counsel asserts that such an interpretation of section 7114(b)(4) is not only contrary to the Statute but to existing Authority precedent as well. I agree.

A. **Whether the Information was Normally Maintained by Respondent in the Regular Course of Business**

The Authority has found that requested information is "normally maintained" by an agency, within the meaning of section 7114(b)(4) of the Statute, if the agency possesses and maintains the information. *Department of Health and Human Services, Social Security Administration, Baltimore, Maryland*, 37 FLRA 1277 (1990). Additionally, the Authority had determined that even where specific information sought does not exist an agency is not relieved of its obligation to reply a union's request under section 7114(b)(4) of the Statute, even if its response is that the information sought does not exist. *U.S. Naval Supply Center, San Diego, California*, 26 FLRA 324 (1987); *Veterans Administration, Washington DC and Veterans Administration, Regional Office, Buffalo, New York*, 28 FLRA 260 (1987); *Department of Health and Human Services, Social Security Administration, New York Region*, 52 FLRA 1133, 1149-50 (1997).

Whether Respondent normally maintained a sanitized listing of disciplinary and adverse actions taken since June 1996 as requested by the Union in its July 30, request for information was answered by Warden George Snyder, who was the Warden at Respondent's facility at the time the data request herein was made. Warden Snyder testified that at the time the data request was made, Respondent did not have a listing of disciplinary files, but that it had only the disciplinary files themselves. Warden Snyder also said that Respondent did not inform the Union that it did not have a listing of disciplinary files already prepared or that it only had the files themselves. In this case, Respondent simply denied the request, relying on the Union's believed failure to state a "particularized need" for the information. As already noted, where information does not exist, it is not sufficient for an agency to respond to the request without stating that the information sought does not exist. *Social Security Administration, Baltimore, Maryland and Social Security Administration, Area II, Boston Region, Boston, Massachusetts*, 39 FLRA 650 (1991).

Assuming that Respondent had no duty to turn over the redacted disciplinary files from June 1996 to June 1998, an obligation still remained to reply to the request and inform the Union that it did not maintain such a listing.

Furthermore, where as here, an agency maintains the information in some form, it is clear that it must reply to the request for data by at least telling the union that it maintains the requested information in a different form. Moreover, "creation" of new documents is within the statutory duty to furnish information which an agency normally maintains as long as the information is maintained in some form and need not be sought from outside sources. Thus, an agency has a duty to extract information or provide the whole record from the existing records physically maintained by it. *U.S. Department of the Air Force, Air Force Logistics Command, Sacramento Air Logistics Center, McClellan Air Force Base, California*, 37 FLRA 987 (1990).

Accordingly, it is found that the information requested, a sanitized listing of disciplinary and adverse actions taken since June 1996, was normally maintained by Respondent in the regular course of business.

Warden Snyder's testimony also confirms that the SIS manual and any and all operations memoranda, program statements, and manuals that indicate how an investigation should be conducted and how referral to the Office of Internal Affairs is handled was normally maintained by Respondent in the regular course of business. In this regard, Warden Snyder testified that the SIS manual is normally kept by the SIS Officer and by the Warden. In addition he stated that other operations memoranda, program statements and manuals which were not classified, were on BOPdocs (BOPDOCS).

Accordingly, it is found that the SIS manual and any and all operations memoranda, program statements, and manuals that indicate how an investigation should be conducted and how referral to the Office of Internal Affairs is handled requested by the Union on July 30, was normally maintained by Respondent in the regular course of business.

The Union also asked for any and all operations memoranda, program statements, manuals, and documents that indicate who proposes discipline, how the decision to impose discipline is made, who determines what the proposal for discipline is, and who can resolve such matters without imposing discipline. Again, Warden Snyder testified that any other operations memoranda, program statements and manuals which were not classified, were on BOPDOCS. Thus,

it is concluded that any and all operations memoranda, program statements, manuals, and documents that indicate who proposes discipline, how the decision to impose discipline is made, who determines what the proposal for discipline is, and who can resolve such matters without imposing discipline as requested by the Union on July 30, was normally maintained by Respondent in the regular course of business.

With respect to Union's request for the complete investigative file on Hendrickson. Warden Snyder admitted that Respondent possesses and maintains the investigative file of Hendrickson.

Consequently, it is found that the complete investigative file on Hendrickson was normally maintained by Respondent in the regular course of business.

B. **Whether the Information was Reasonably Available.**[3]

Availability under section 7114(b)(4) has been defined as that which is accessible or attainable. *Department of Health and Human Services, Social Security Administration*, 36 FLRA 943 (1990); *U.S. Department of Justice Washington, DC and U.S. Immigration and Naturalization Service, Northern Region, Twin Cities, Minnesota*, 46 FLRA 1526 (1993).

Warden Snyder agreed that a sanitized listing of disciplinary and adverse actions taken since June 1996 or the disciplinary files were accessible and attainable by Respondent. Accordingly, it is found that the data requested was reasonably available.

Warden Snyder's testimony also reveals that the SIS manual is accessible and attainable by Respondent. Warden Snyder testified that any other operations memoranda, program statements and manuals which are not classified, were on BOPDOCS, and were available to the Union.

Thus, it is found that the SIS manual and any and all operations memoranda, program statements, and manuals that indicate how an investigation should be conducted and how

---

[3] Respondent contends that the General Counsel did not move to amend the complaint to give notice of the non-existence of an annotated disciplinary listing. That claim is rejected. Whether or not the information existed is a legal conclusion to be drawn from the fully litigated facts.

referral to the Office of Internal Affairs is handled was reasonably available.

As previously noted, the testimony reveals that any other operations memoranda, program statements and manuals which were not classified, were on BOPDOCS, and were available to the Union. Therefore, it is found that any and all operations memoranda, program statements, manuals, and documents that indicate who proposes discipline, how the decision to impose discipline is made, who determines what the proposal for discipline is, and who can resolve such matters without imposing discipline as requested by the Union on July 30, was reasonably available.

The evidence reveals that the complete investigative file on Hendrickson was accessible and attainable by Respondent. (Tr. at 107-09).

Accordingly, it is found that the complete investigative file on Hendrickson was reasonably available.

C. **Whether the Information Constituted Guidance, Advice Counsel or Training Provided for Management Officials or Supervisors, Relating to Collective Bargaining**

Section 7114(b)(4)(C) exempts from disclosure to the exclusive representative information which constitutes guidance, advice, counsel, or training for management officials relating specifically to the collective bargaining process, such as: (1) courses of action agency management should take in negotiations with the union; (2) how a provision of the collective bargaining agreement should be interpreted and applied; (3) how a grievance or unfair labor practice charge should be handled; and (4) other labor-management interactions which have an impact on the union's status as the exclusive representative. *National Labor Relations Board*, 38 FLRA 506 (1990) *aff'd sub nom. NLRB v. FLRA*, 952 F.2d 523 (D.C. Cir. 1992). The evidence in this case indicates that a sanitized listing of disciplinary and adverse actions taken since June 1996 as requested by the Union does not constitute guidance, advice, counsel or training provided for management officials or supervisors, relating to collective bargaining.

Accordingly, it is found that a sanitized listing of disciplinary and adverse actions taken since June 1996 does

not constitute guidance, advice, counsel or training provided for management officials or supervisors, relating to collective bargaining.

Warden Snyder testified that the information requested by the Union in the SIS manual and any and all operations memoranda, program statements, and manuals that indicate how an investigation should be conducted and how referral to the Office of Internal Affairs is handled does not constitute guidance, advice, counsel or training provided for management officials or supervisors, relating to collective bargaining.

Accordingly, it is found that the SIS manual and any and all operations memoranda, program statements, and manuals that indicate how an investigation should be conducted and how referral to the Office of Internal Affairs is handled does not constitute guidance, advice, counsel or training provided for management officials or supervisors, relating to collective bargaining.

The instant record amply demonstrates that and it is found that the Union's request for any and all operations memoranda, program statements, manuals, and documents that indicate who proposes discipline, how the decision to impose discipline is made, who determines what the proposal for discipline is, and who can resolve such matters without imposing discipline as requested by the Union does not include information that constitutes guidance, advice, counsel or training provided for management officials or supervisors, relating to collective bargaining. (Tr. at 106-07).

Based on the record as a whole, it is concluded and found that the complete investigative file on Hendrickson does not involve any information which constitutes guidance, advice, counsel or training provided for management officials or supervisors, relating to collective bargaining.

D. **Whether the Union Articulated a "Particularized Need" for the Information in its July 30 Data Request**

1. The sanitized listing of disciplinary and adverse actions taken since June 1996

Internal Revenue Service, Washington, DC and Internal Revenue Service, Kansas City Service Center, Kansas City, Missouri, 50 FLRA 661 (1995)(*IRS Kansas City*) formulated the criteria for determining whether information is necessary and how requested information will be disclosed under section 7114(b)(4) of the Statute. In *IRS Kansas City* the Authority specified that a union must establish a particularized need requested information by articulating, with specificity, why it needs the information, including the uses to which it will put the information and the connection between those uses and its representational responsibilities under the Statute. The requirement that a union establish such need can not be satisfied merely by showing that requested information is or would be relevant or useful to a union. Instead, it must be established that the information is required for the union to adequately represent unit employees. An agency denying a request for information under the Statute has a comparable responsibility as it must assert and establish any countervailing anti-disclosure interests. Its responsibility can not be satisfied through broad or general claims.

The Union herein explained that it needed the information to determine whether or not a grievance should be filed over the disciplinary action imposed on Hendrickson. In addition, the Union stated that the information was needed to determine if Respondent had imposed disparate discipline, based on race, sex, or ethnic origin, and/or based on bargaining unit membership as opposed to employees who are not in the bargaining unit, in particular employees who hold supervisory or higher positions. The Union claimed that the program statement on standards of conduct and responsibility indicated that employees are held to the same standard of conduct, but that supervisors are held to a higher standard of conduct due to their increased level of responsibility and the need to set an example to other employees. The Union mentioned that listing the specific infraction and coding the documents as it requested would allow it to make the necessary comparisons. In my opinion, the Union's request described specifically why it needed the requested information, including the uses to which it would put the information and established a connection between those uses and its representational responsibilities under the Statute.

It is well settled that disclosure of disciplinary actions of employees, sanitized to remove names and personal identifiers, does not violate the Privacy Act. *U.S. Equal Employment Opportunity Commission, Washington, DC*, 20 FLRA 357 (1985)(*EEOC*). The Union herein, requested that the listing of disciplinary files from June 1996 to June 1998 excluding all personal identifiers such as names and social security numbers. While the testimony elicited by Respondent from Union President Brian Lowry confirms that due to the small size of the facility sanitized information might allow the Union to identify individuals from the remaining unsanitized information provided and through rumor. Respondent did not tell the Union that this was a countervailing anti-disclosure interest at the time the request was made, however.

Respondent maintains that *Alirez v. NLRB*, 676 F.2d 423 (10th Cir. 1982) supports its argument that even with the specified redaction, disclosure as requested by the Union would guarantee disclosure of the identities of all employees disciplined in the two year history of FCI Forrest City along with personal, private information regarding such disciplinary actions, which is barred by the Privacy Act of 1974. The information request in the *Alirez* case was made under the Freedom of Information Act which is a releasing statute, in favor of disclosure. *Department of the Air Force v. Rose*, 425 U.S. 352, 360-61 (1976). Furthermore, Respondent offered no evidence other than Lowery's testimony to support any argument that the Privacy Act would bar disclosure here.

Section 7114(b)(4) requires an agency to furnish to the exclusive representative involved, or its authorized representative, upon request and, <u>to the extent not prohibited by law</u>, data. In this matter the Union's request was made under section 7114(b)(4) of the Statute, and was not a FOIA request; therefore, *Alirez* is inapplicable. Furthermore, it has long been established that the FOIA does not prohibit release of any data. It merely permits agencies to withhold from release data falling within its exceptions. *U.S. Customs Service, Region IV, Miami, Florida*, 48 FLRA 1239, 1242 (1993). Assuming *Alirez* is applicable, Respondent's assumption that "rumors" that give the Union a means of guessing who the individual employees were is no more than conjecture, particularly since Respondent did not proffer evidence such as the number of

disciplinary files at issue. Accordingly, it is concluded that Respondent's argument lacks merit.

It has been held that disclosure of sanitized disciplinary information would not violate the Privacy Act. *Internal Revenue Service, Austin District Office, Austin, Texas*, 51 FLRA 1166, 1169 (1996)(*IRS Austin*). The Authority in *IRS Austin*, found that even assuming employee privacy interests might be at stake even with regard to sanitized documents, when balanced against the public interest in disclosure, such disclosure would not constitute a clearly unwarranted invasion of personal privacy within the meaning of FOIA Exemption 6. Also the Authority has found that disclosure of disciplinary actions and performance appraisals of employees sanitized to remove names and personal identifiers does not violate the Privacy Act. *EEOC,* 20 FLRA at 357. In *U.S. Department of Justice, Immigration and Naturalization Service, Border Patrol, El Paso, Texas*, 37 FLRA 1310 (1990), the Authority held that when a Union requests data in a sanitized format it is unnecessary to reach Privacy Act issues. That is the situation in this case. Moreover, the Union request in this cases did not require the release of employee names or identifiers, therefore appears to rule out privacy issues and concerns. *U.S. Department of Defense, Maxwell Air Force Base, Maxwell Air Force Base, Georgia*, 36 FLRA 110 (1990). See also, *IRS Austin*, 51 FLRA at 1166.

An agency asserting that the Privacy Act bars disclosure must establish: (1) that the requested information is contained in a "system of records," within the meaning of the Privacy Act; (2) that disclosure would implicate employee privacy interests; and (3) the nature and significance of those privacy interests. *U.S. Department of Transportation, Federal Aviation Administration, New York TRACON, Westbury, New York*, 50 FLRA 338, 345 (1995)(FAA). There is no record evidence of the nature and significance of any employee's privacy interests here.

Respondent also relies on *U.S. Department of Labor, Washington, DC*, 51 FLRA 462 (1995)(*DOL*), to back its argument that the requested coded listing of the disciplinary and adverse action files were not relevant and necessary to the union's representational duties. In *DOL,* the union requested *unsanitized* copies of all disciplinary suspension records of unit and non-unit employees covering

a 5-year period in order to prepare for arbitration hearings. Although the Authority found that the General Counsel had correctly asserted that the public interest would be served by release of disciplinary suspension records, which would shed light on Government operations and, therefore, would serve a public interest cognizable under Exemption 6 of the FOIA, the Authority found that there was no assertion or other basis on which to conclude that this public interest would be better served by the disclosure of disciplinary records in an unsanitized form that reveals the identity of employees who were the subject of discipline. Here, the Union did not request unsanitized disciplinary files. Rather, it requested a listing of the disciplinary and adverse actions taken for a 2-year period, with all personal identifiers such as names and social security numbers redacted. (G.C. Exh. 6). Thus, the Union stated with specificity why it needed the requested information, including the uses to which it would put the information and the connection between those uses and its representational responsibilities under the Statute. It thus appears that the Union's information request met the particularized need requirement as set out in *IRS Kansas City* and Respondent has failed to establish a law which prohibits the disclosure of the information.

> 2. The SIS manual and any and all operations memoranda,
>
> program statements, and manuals that indicate how an investigation should be conducted and how referral to the OIA is handled

The Authority set forth guidelines in *IRS Kansas City*, for determining whether information is necessary and how requested information will be disclosed under section 7114 (b)(4) of the Statute. The Authority held that a union requesting information under that section must establish a particularized need for the information by articulating, with specificity, why it needs the requested information, including the uses to which it will put the information and the connection between those uses and its representational responsibilities under the Statute. The requirement that a union establish such need will not be satisfied merely by showing that requested information is or would be relevant or useful to a union. Instead, a union must establish that requested information is required in order for the union to adequately represent its employees. An agency denying a

request for information under the Statute must assert and establish any countervailing anti-disclosure interests. Like a union, an agency may not satisfy its burden by making conclusory assertions. It is my view, as set out below that the Union's request for information here met the particularized need requirement as set forth in *IRS Kansas City* and that the Respondent did not establish a law which prohibits the disclosure of the requested information.

In this case, the Union explained that it needed the information to determine whether or not a grievance should be filed in the case of the disciplinary action imposed on Hendrickson. Also the Union declared that it needed the information to determine whether the investigation was conducted properly and in accordance with Bureau of Prison policies and procedures, what evidence is required to be gathered, and whether all evidence was gathered in the case. (G.C. Exh. 6). In addition, it was the Union's position that the SIS manual and any and all operations memoranda, program statements, and manuals that indicate how an investigation should be conducted and how referral to the Office of Internal Affairs is handled, were needed to determine whether Hendrickson was treated differently than other employees and to determine if there was exculpatory evidence that was overlooked. (Tr. at 58-60; G.C. Exh. 6).

In its request for the SIS manual, the Union asked for a copy but, did not name a specific chapter or section because the SIS manual is a limited use document which the Union does not have access to. (Tr. at 58; 80; G.C. Exh. 6). The purpose of the request for the SIS manual is clear from the wording of the request, which asked for any other documentation that indicates how an investigation should be conducted and how referral to the Office of Internal Affairs is handled. Thus, the Union explained that it needed the information to determine whether the investigation was conducted properly and in accordance with Bureau of Prison policies and procedures, what evidence is required to be gathered, and whether all evidence was gathered in Hendrickson's case. (G.C. Exh. 6). Although Respondent contends that this would require an interpretation on its part, its witnesses Warden Snyder and Correctional Services Administrator David Dodrill confirm that Respondent understood what was requesting as demonstrated by their references to the one chapter in the SIS manual dealing with

staff misconduct and employee investigations.[4] (Tr. at 96; 145; 156). In weighing the degree of specificity required of a union in data requests one must allow for the reality that, in many cases a union certainly will be unaware of the contents of documents it is requesting. *IRS Kansas City*, 50 FLRA at 670 n.13. Applying a particularized need test to a situation where the exclusive representative has not seen and asking it to describe documents it has not seen makes its task impossible. *See also*, *American Federation of Government Employees, Local 2343 v. FLRA*, 144 F.3d 85 (D.C. Cir 1998) (*AFGE Local 2343*). In this case, the Union described why the information was needed, what purpose the information would serve and even though the Union did not give a specific chapter in the SIS manual, not having seen the document, it could hardly have been expected to do so. Thus, the Union had no way of knowing what sections of the SIS manual involved employee investigations. (Tr. at 77-78; 156; 160-61).

IRS Kansas City, 50 FLRA at 671, makes it clear that the Authority expects the parties to consider, in determining whether and/or how disclosure is required, alternative forms or means of disclosure that may satisfy both a union's information needs and an agency's interests in information. Furthermore, in the instant data request, the Union asked that Respondent contact Lowry if further clarification of the request was required or if Respondent wanted to meet to discuss the request, or a format or means of furnishing the information to the Union, or the issues giving rise to the request. (G.C. Exh. 6). There is no evidence that Respondent contacted the Union or considered giving it the requested information in an alternate form. (Tr. at 76). The standard in data request cases appears to be to facilitate and encourage the amicable settlements of disputes and thereby effectuate the purposes and policies of the Statute. In my view, a failure of an agency to communicate its real concerns with an information request constitutes a failure to properly respond to the request. (Tr. at 32-33).

---

[4] My in camera review of the SIS manual confirms the above testimony. In my view, and consistent with the other findings in this case, Respondent had an obligation to at least inform the Union of limited use of the SIS manual and to supply it with the Chapter or Chapters dealing with staff misconduct and employee investigations.

Respondent further asserts that the disclosure of the SIS manual is prevented by law, specifically the Law Enforcement Privilege (otherwise known as the investigatory privilege) "to prevent disclosure of law enforcement techniques and procedures, to preserve the confidentiality of sources, to protect witness and law enforcement personnel, to safeguard the privacy of individuals involved in an investigation, and otherwise to prevent interference with an investigations.). *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 223, 237-43, (1978)(*Robbins Tire & Rubber*). This argument is rejected since the Authority has not previously recognized the Law Enforcement Privilege and no case Respondent cites is on point with the case at issue here. In *Robbins Tire & Rubber*, after the NLRB filed an unfair labor practice complaint against the respondent employer, the respondent requested, pursuant to FOIA, that the NLRB make available prior to the hearing copies of all potential witnesses' statements collected during the NLRB's investigation. The NLRB denied the request on the ground that the statements were exempt from disclosure under, inter alia, Exemption 7(A) of FOIA, which provides that disclosure is not required of investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would interfere with enforcement proceedings. Section 7114(b)(4) requires an agency to furnish to the exclusive representative involved, or its authorized representative, upon request and, <u>to the extent not prohibited</u> <u>by law</u>, data. FOIA is not a prohibitive statute and therefore does not apply. This case involves the Union requesting documentation from Respondent under section 7114(b)(4) of the Statute, not a FOIA request; therefore, *Robbins Tire & Rubber* is inapplicable. Additionally, Exemption 7(A) of FOIA applies to investigatory records compiled for law enforcement purposes. The SIS manual is not an investigatory record compiled for law enforcement purposes. It is a policy manual, which gives guidance, in part, to staff or employee investigations. This case is not on point with *Robbins Tire & Rubber*. Here, we have no FOIA request, but rather a data request under section 7114(b)(4) and here, there is no actual, contemplated enforcement proceeding that would be interfered with. Additionally, the Supreme Court held that the records at issue, witness statements, would only be exempt from FOIA disclosure until the completion of the NLRB's hearing.

Again, an agency asserting that the Privacy Act bars disclosure is required to demonstrate: (1) that the requested information is contained in a "system of records," within the meaning of the Privacy Act; (2) that disclosure would implicate employee privacy interests; and (3) the nature and significance of those privacy interests. *FAA*, 50 FLRA at 345. Respondent has failed to put into evidence the nature and significance of any employee's privacy interests with regard to the SIS manual.

Respondent also claims that the security of the SIS office itself and the computer system that it utilizes would be at risk. Additionally, the SIS manual discusses how Respondent gathers information and the techniques used, including some of the security features and monitoring devices Respondent uses which aren't necessarily known. (Tr. at 151-53). However, Lowry testified to other local union presidents having access to the SIS manual, including Pam Clampett at DCI Bastrop, Texas, who can review the manual and take notes, and Phil Hewlitt, at Elkton, Ohio, who was given a copy of the manual by management. (Tr. at 36-37).

Respondent cites *Touhy v. Ragen*, 340 U.S. 462 (1951)(*Touhy*) in support of its contention that Department of Justice rules and regulations prohibit disclosure of the SIS manual. However, *Touhy* is about Department of Justice Order No. 3229, which concerns how subordinates of the Department of Justice are to respond to subpoena duces tecum. This has nothing to do with unions requesting information under the Statute and is inapplicable to the case before us.

Although Respondent also cites *Haas v. Henkel*, 216 U.S. 462 (1910), which concerns an appeal from a circuit court to review a judgment refusing relief by habeas corpus and certiorari to a defendant held in custody to await an order of removal to another city for the trial of indictments pending against him there. This case has no application to the issues in the instant matter.

Finally, Respondent cites *Tuite v. Henry*, 181 F.R.D. 175 (D.D.C. 1998) which holds that the Federal law enforcement privilege is a qualified privilege designed to prevent disclosure of information that would be contrary to the public interest in the effective functioning of law enforcement. This is a qualified privilege that is applied

to instances where a party is subpoenaing documents. This qualified privilege does not apply to Unions seeking data under section 7114(b)(4) of the Statute.

Regarding any and all operations memoranda, program statements, and manuals that indicate how an investigation should be conducted and how referral to the Office of Internal Affairs is handled, Respondent replied in its response that the request for memoranda and statements was for an interpretation of policy and procedures and was not a request for data under the Statute. Lowry admittedly did not request any document by name, other than the SIS manual. Lowry testified that he did so because he did not know what these documents were called because he does not have access to the manual that may list the memoranda or program statements, numbers, references, or whatever they are. The description of what the Union wanted was detailed enough, however, for Respondent to know what the Union wanted. Indeed, in Respondent has continued to assert throughout these proceedings that it has provided all potentially responsive documents to the Union via BOPDOCS. No one from Respondent ever told that to the Union, however. I agree with the General Counsel, that had Respondent advised the Union of its position that there was nothing outside of BOPDOCS that would answer this request a hearing in this case would not have been necessary. Respondent's failure to communicate its real concerns to the Union is again, in my view, equivalent to a failure to properly respond to the request herein.

Respondent maintains that the routine and continuous providing of BOPDOCS is consistent with effective and efficient government and that it should not be required to provide voluminous hard copies of policies and procedures in response to repetitive requests. Thus, Respondent asserts that it has already made complete electronic responses to all of the information requests at issue herein. There are several reasons that BOPDOCS might not meet the Union's data requests in this particular matter. Here the Union never claimed that it did not receive BOPDOCS or did not know how to use BOPDOCS. Indeed, Lowry testified that he knew how to use BOPDOCS and that he did not need training on it. The Union's concern was to make sure it had all the information applicable to disciplinary actions, even that information which is in limited official use documents and not available to it through BOPDOCS. Furthermore, Respondent admitted

that limited official use documents are not on BOPDOCS, that there are only a small number of these limited official use documents and that they are not made available to the Union, which is why the Union was requesting this information. Finally, there is a question regarding BOPDOCS and whether they are current since there is apparently some lag time between when a policy goes into effect and when it is made available on BOPDOCS. This lag time certainly raises a question as to whether the BOPDOCS in the Union's possession contained all the information it was requesting.

James P. Foley, a retired FOB employee testified about the national level agreement saying that Respondent gave access to BOPDOCS with the quid pro quo that the Union wouldn't have to ask for information anymore. (Tr. at 122-38). It is not contested that it had access to BOPDOCS or that public documents were on BOPDOCS; but, rather, that BOPDOCS does not contain limited access documents sought by the Union in this case. In any event, it cannot be concluded. Foley's testimony that any provision of the national agreement showed that the Union waived its right to request information under section 7114(b)(4) of the Statute by gaining access to BOPDOCS. (Tr. at 138). Warden Dodrill also testified that this is not memorialized in any other document. (Tr. at 139). Thus, Respondent claims that the quid pro quo was a verbal agreement. (Tr. at 139). Respondent states that this verbal agreement was in relation to policies and not information. (Tr. at 140-41). Furthermore, it appears from the record that the agreement applied only to information that is available to the public and not any limited access documents. (Tr. at 141-42). Contrary to Foley's testimony, Philip Glover, the Union's President of Council of Prison Locals, American Federation of Government Employees, testified that although there was an agreement to distribute BOPDOCS to the Union, there was no agreement that as a result of that distribution that the Union waived its right to request information under section 7114(b)(4) of the Statute. (Tr. at 193-94). Glover was unaware of any quid pro quo agreement and stated that the parties continue to negotiate over the distribution of BOPDOCS. (Tr. at 194-95).

Thus, the Union stated with specificity why it needed the requested information, including the uses to which it would put the information and the connection between those uses and its representational responsibilities under the

Statute. Therefore, it appears that the Union's information request met the particularized need requirement as set out in *IRS Kansas City* and Respondent has failed to establish a law which prohibits the disclosure of the information.

3. Any and all operations memoranda, program statements,
manuals, and documents that indicate who proposes discipline, how the decision to impose discipline is made, who determines what the proposal for discipline is, and who can resolve such matters without imposing discipline

As already noted *IRS Kansas City* establishes the guidelines for determining whether information is necessary and how requested information will be disclosed under section 7114(b)(4) of the Statute.

In this case, the Union explained that it needed the information to determine whether or not a grievance should be filed in the case of the disciplinary action imposed on Hendrickson. The Union further stated that it needed the information to determine who can formally resolve problems between employees within the work place in order to determine if the supervisors had the authority to resolve the matter without imposing discipline, because an investigation was conducted and discipline imposed after the employee involved was told by three supervisors that the matter was closed. (Tr. at 74; G.C. Exh. 6). Respondent also alludes to the fact that this matter was not brought up in the oral response conducted by Warden Snyder, before he made his decision regarding the proposed suspension. (Tr. at 74). There is nothing in the Statute that requires a Union to have brought up every possible argument at the time of the oral response. Again, the Union made the request for information to determine if this was a proper argument to make in a grievance. The Union needed the information first, in order to make that determination, however.

Regarding the operations memoranda, program statements, manuals, and documents relating to discipline, Respondent replied that the request for memoranda and statements was for an interpretation of policy and procedures and was not a request for data under the Statute. (G.C. Exh. 8). Lowry admitted that he did not request any document by name, other than the SIS manual. (Tr. at 63-67). Lowry stated he did

this because he did not know what these documents were called because he does not have access to the manual that may list the memoranda or program statements, numbers, references, or whatever they are. (Tr. at 79-80). However, the description of what the Union wanted was detailed enough for Respondent to know what the Union wanted. Indeed, Respondent repeatedly asserted that it has provided all potentially responsive documents to the Union via BOPDOCS. (Tr. at 20-21; 57-58; 94-95; 112-13). No one from Respondent informed the Union of this at the time of the request. (Tr. at 76). The Union stated in its third and final request that Lowry should be contacted if Respondent required further clarification of the request or if it wanted to meet to discuss the request, or a format or means of furnishing this information to the Union, or the issues giving rise to the request. (G.C. Exh. 6). Respondent ignored this apparent attempt to discuss what the Union's needs really were and failed to communicate its real concerns with the request to the Union and, thereby failed to properly respond to the request.

The Union never alleged that it did not receive BOPDOCS or did not know how to use BOPDOCS; in fact, Lowry admitted that he knows how to use BOPDOCS and does not need training on it. (Tr. at 65). Rather, the Union wanted to make sure it had all the information applicable to disciplinary actions, even that information which is in limited official use documents and not available to the Union via BOPDOCS. (Tr. at 65; 77-78). Respondent admitted that limited official use documents are not on BOPDOCS, that there are only a small number of these limited official use documents and that they are not made available to the Union, which is why the Union was requesting this information. (Tr. at 105; 113). Additionally, there is an issue regarding BOPDOCS as to it being up-to-date, due to the fact that there is some lag time between a policy goes into effect and when it is made available on BOPDOCS. (Tr. at 78).

Thus, the Union stated with specificity why it needed the requested information, including the uses to which it would put the information and the connection between those uses and its representational responsibilities under the Statute. Consequently, it appears that the Union's information request did meet the particularized need requirement as set out in *IRS Kansas City* and Respondent has

failed to establish a law which prohibits the disclosure of the information.

4. The complete investigative file on Shannon Hendrickson

In this case, the Union explained that it needed the information in order to determine whether or not a grievance should be filed in the case of the disciplinary action imposed on Hendrickson. The Union further stated that it needed the information to determine if there was exculpatory evidence in the file that was not made available to Hendrickson and the Union and to determine if all the evidence was gathered. The Union also stated that it needed to be apprized of all the information available to the Warden, who made the decision on the disciplinary proposal, to determine if the affected employee and the Union had the opportunity to present a complete defense before the decision was made, and whether there were factors considered in the decision that the employee and the Union were not aware of. Hendrickson e-mailed Katie Bozeman on June 15, giving Lowry permission to see any files regarding this investigation and that if she had any questions, she was to call Hendrickson. Respondent relies on semantics in an attempt to avoid providing the Union information under the Statute when it maintains that it did not have to give the Union a copy of Hendrickson's investigative file since Hendrickson had only given the Union permission to see any files. However, Respondent did not inform the Union that it would not give the Union a copy of the investigative file because Hendrickson had only given permission for the Union to see it. Respondent instead informed the Union that it could not have a copy of the investigative file because it was not used in their decision to issue a one-day suspension to Hendrickson. Respondent ignores the Union's other stated reasons that it wanted to review the investigative file to make sure there wasn't any exculpatory evidence and to determine if all the evidence was gathered. The Union requested that Respondent review the file and determine if all the evidence was gathered and make sure there was no exculpatory evidence; it was clearly asking for the file in order to make those determinations for itself. The Union was, therefore, not asking for an interpretation of policy and procedures as Respondent asserted in its response.

This case differs from *AFGE Local 2343*, as relied on by Respondent. *AFGE Local 2343* reiterates the standard for particularized need noted above in *IRS Kansas City*, and holds that the Union failed to meet particularized need because of its conclusory claim that it needed the information to prepare for arbitration of its previously filed grievance. Here, the Union went beyond making a conclusory statement that it needed the investigative file for a possible grievance. The Union stated with specificity why it needed the information, including the uses to which it would put the information and the connection between those uses and its representational responsibilities under the Statute.

It is the Respondent's position that the Union had no valid Privacy Act waiver to support its request for a copy of the complete unsanitized SIS Investigation. In Hendrickson's case, that there is no public interest to be served by redacting disclosure, therefore disclosure is barred by the Privacy Act. An agency asserting that the Privacy Act bars disclosure is required to demonstrate: (1) that the information requested is contained in a "system of records," within the meaning of the Privacy Act; (2) that disclosure would implicate employee privacy interests; and (3) the nature and significance of those privacy interests. *FAA*, 50 FLRA at 345. Respondent cites *DOL*, wherein the Authority found that the agency had established employees' privacy interests with respect to disciplinary information which can be embarrassing and stigmatizing to the employees. Here, Hendrickson gave the Union permission to see any of his files, thereby waiving any privacy interests he may have. In this respect, the Authority has held that the Privacy Act does not preclude release of information concerning an employee when the information is sought by a union as the employee's representative. *Federal Employees Metal Trades Council and U.S. Department of the Navy, Mare Island Naval Shipyard, Vallejo, California*, 38 FLRA 1410 (1991). In such circumstances, the union's access to the relevant records would not be a clearly unwarranted invasion of personal privacy. *U.S. Department of Justice, Office of Justice Programs*, 45 FLRA 1022 (1992). Respondent did not submit any evidence as to any other employees' privacy interests that were of concern to them here. Moreover, Warden Snyder doubted there was any sensitive security information contained in Hendrickson's investigative file.

Respondent relies on *Laborers' International Union of North America v. U.S. Department of Justice*, 772 F.2d 919, 920-22 (D.C. Cir. 1984)(*LIUNA*) in support of its contention that its non-disclosure interests outweigh the Union's interests in the complete investigative file. In *LIUNA*, the union brought an action seeking to compel disclosure under FOIA of a Department of Justice's report on organized crime and labor unions. The court held that the report was an investigative record compiled for law enforcement purposes and that disclosure of the report, which contained names of numerous individuals and documented alleged illegal activities of several of the individuals, would constitute a significant invasion of privacy. Here, Respondent has produced no evidence that the investigative file of Hendrickson involves anybody other than Hendrickson and the five lieutenants, whose affidavits appeared in Hendrickson's disciplinary file, or that there would be a significant invasion of anyone's privacy by releasing this document.

Lastly, Respondent cites *Marathon LeTourneau Co., Marine Division v. NLRB*, 414 F. Supp. 1074, 1080 (S.D. Miss. 1976), which involves a private company seeking documents from the NLRB under a FOIA request. Again, this case discusses an exemption under FOIA and never discusses the Privacy Act. FOIA is a releasing statute, in favor of disclosure. Section 7114(b)(4) requires an agency to furnish to the exclusive representative involved, or its authorized representative, upon request and, <u>to the extent not prohibited by law</u>, data. FOIA is not a prohibitive statute and therefore does not apply. In this matter the Union was requesting documentation from Respondent under section 7114(b)(4) of the Statute, and not making a FOIA request. It is my view, that the Union's information request met the particularized need requirement as set out in *IRS Kansas City* and Respondent has failed to establish a law which prohibits disclosure.

Based on all of the foregoing, it is found and concluded that Respondent violated section 7116(a)(1), (5) and (8) of the Statute by failing to provide a sanitized listing of disciplinary and adverse actions taken since June 1996; the SIS manual and any and all operations memoranda, program statements, and manuals that indicate how an investigation should be conducted and how referral to the Office of Internal Affairs is handled; any and all operations memoranda, program statements, manuals, and

documents that indicate who proposes discipline, how the decision to impose discipline is made, who determines what the proposal for discipline is, and who can resolve such matters without imposing discipline; the complete investigative file on Hendrickson which the Union requested for representational purposes.

ORDER

Pursuant to section 2423.41(c) of the Authority's Rules and Regulations and section 7118 of the Federal Service Labor-Management Relations Statute, the U.S. Department of Justice, Federal Bureau of Prisons, Federal Correctional Institution, Forrest City, Arkansas, shall:

1. Cease and desist from:

(a) Failing and refusing to furnish a sanitized listing of disciplinary and adverse actions taken between June 1996 and July 1998; the SIS manual and any and all operations memoranda, program statements, and manuals that indicate how an investigation should be conducted and how referral to the Office of Internal Affairs is handled; any and all operations memoranda, program statements, manuals, and documents that indicate who proposes discipline, how the decision to impose discipline is made, who determines what the proposal for discipline is, and who can resolve such matters without imposing discipline; the complete investigative file on Shannon Hendrickson as requested by the American Federation of Government Employees, Local 0922.

(b) Failing to furnish information requested by the American Federation of Government Employees, Local 0922, under the Statute in a timely manner.

(c) Failing to notify the American Federation of Government Employees, Local 0922, that certain information requested under the Statute did not exist.

(d) In any like or related manner, interfering with, restraining, or coercing unit employees in the exercise of their rights assured by the Statute.

2. Take the following affirmative action in order to effectuate the purposes and policies of the Statute:

(a) Furnish to the American Federation of Government Employees, Local 0922, the exclusive representative of certain of its employees, a sanitized listing of disciplinary and adverse actions taken between June 1996 and July 1998; the SIS manual and any and all operations memoranda, program statements, and manuals that indicate how an investigation should be conducted and how referral to the Office of Internal Affairs is handled; any and all operations memoranda, program statements, manuals, and documents that indicate who proposes discipline, how the decision to impose discipline is made, who determines what the proposal for discipline is, and who can resolve such matters without imposing discipline; the complete investigative file on Shannon Hendrickson.

(b) Respond in a timely manner to requests for information made by the American Federation of Government Employees, Local 0922, under the Statute.

(c) Notify the American Federation of Government Employees, Local 0922, when certain information requested under the Statute does not exist.

(d) Post at its facilities in Forrest City, Arkansas, where bargaining unit employees represented by the American Federation of Government Employees, Local 0922, are located, copies of the attached Notice on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms, they shall be signed by the Warden, and shall be posted and maintained for 60 consecutive days thereafter. Reasonable steps shall be taken to ensure that such Notices are not altered, defaced or covered by any other material.

(e) Pursuant to section 2423.41(e) of the Authority's

Rules and Regulations, notify the Regional Director, Dallas Regional Office, Federal Labor Relations Authority, in writing, within 30 days from the date of this Order as to what steps have been taken to comply.

Issued, Washington, DC, March 6, 2000.

_____

ELI NASH, JR.
ADMINISTRATIVE LAW JUDGE

NOTICE TO ALL EMPLOYEES

POSTED BY ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the U.S. Department of Justice, Federal Bureau of Prisons, Federal Correctional Institution, Forrest City, Arkansas, has violated the Federal Service Labor-Management Relations Statute, and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT refuse to furnish a sanitized listing of disciplinary and adverse actions taken between June 1996 and July 1998; the SIS manual and any and all operations memoranda, program statements, and manuals that indicate how an investigation should be conducted and how referral to the Office of Internal Affairs is handled; any and all operations memoranda, program statements, manuals, and documents that indicate who proposes discipline, how the decision to impose discipline is made, who determines what the proposal for discipline is, and who can resolve such matters without imposing discipline; the complete investigative file on Shannon Hendrickson as requested by the American Federation of Government Employees, Local 0922, the exclusive representative of certain of our employees.

WE WILL NOT fail to furnish information requested by the American Federation of Government Employees, Local 0922, under the Federal Service Labor-Management Relations Statute in a timely manner.

WE WILL NOT fail to notify the American Federation of Government Employees, Local 0922, that certain information requested under the Federal Service Labor-Management Relations Statute does not exist.

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce our employees in the exercise of their rights assured them by the Federal Service Labor-Management Relations Statute.

WE WILL furnish a sanitized listing of disciplinary and adverse actions taken between June 1996 and July 1998; the SIS manual and any and all operations memoranda, program statements, and manuals that indicate how an investigation should be conducted and how referral to the Office of Internal Affairs is handled; any and all operations memoranda, program statements, manuals, and documents that indicate who proposes discipline, how the decision to impose discipline is made, who determines what the proposal for discipline is, and who can resolve such matters without imposing discipline; the complete investigative file on Shannon Hendrickson as requested by the American Federation of Government Employees, Local 0922, the exclusive representative of certain of our employees.

WE WILL furnish information requested by the American Federation of Government Employees, Local 0922, under the Federal Service Labor-Management Relations Statute in a timely manner.

WE WILL notify the American Federation of Government Employees, Local 0922, that certain information requested under the Federal Service Labor-Management Relations Statute does not exist.

(Respondent/Activity)

Date: By:
(Signature)
(Title)

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

If employees have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Director, Dallas Regional Office, Federal Labor Relations Authority, whose address is: 525 Griffin Street, Suite 926, Dallas, TX 75202, and whose telephone number is: (214)767-6266.

CERTIFICATE OF SERVICE

I hereby certify that copies of this **DECISION** issued by ELI NASH, JR., Administrative Law Judge, in Case No. DA-CA-80834, were sent to the following parties:

CERTIFIED MAIL AND RETURN RECEIPT — **CERTIFIED NOS:**

Denyce Lemons, Esquire — P168-060-150
John Bates, Esquire
Federal Labor Relations Authority
525 Griffin Street, Suite 926
Dallas, TX 75202

Steve Simon, Esquire
William Lindsey, Esquire — P168-060-151

DOJ, FBOP, Room 724
320 First Street, N.W.
Washington, DC 20534

Bryan Lowry, President — P168-060-152
AFGE, Local 0922
P.O. Box 1075
Forrest City, AR 72336

REGULAR MAIL:

President
AFGE, AFL-CIO
80 F Street, NW.
Washington, DC 20001

_____
CATHERINE L. TURNER, LEGAL TECHNICIAN

DATED: MARCH 6, 2000
WASHINGTON, DC